HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION Nos.12970, 12971, 12972, 12973,

12974, 12975, 12976, 12977, 12978,

12979, 12980, 12981, 12982, 12983,

12984 and 13079 of 2005

25-08-2005

WRIT PETITION No.12970 of 2005 :

Between:

Smt. Nallam Ratna Kumari

…Petitioner

And

Superintendent of Police,

Vigilance & Enforcement,

Rajahmundry and others.

…Respondents.

WRIT PETITION No.12971 of 2005 :

Between:

Sri Maddi Krishna Murthy

…Petitioner

And

Superintendent of Police,

Vigilance & Enforcement,

Rajahmundry and others.

…Respondents.

WRIT PETITION No.12972 of 2005 :

Between:

Maddi Venkata Swamy

…Petitioner

And

Superintendent of Police,

Vigilance & Enforcement,

Rajahmundry and others.

…Respondents.

WRIT PETITION No.12973 of 2005 :

Between:

K. Venkata Subba Rao

…Petitioner

And

Superintendent of Police,

Vigilance & Enforcement,

Rajahmundry and others.

…Respondents.

WRIT PETITION No.12974 of 2005 :

Between:

Aritakula Veerla Venkaiah

…Petitioner

And

Superintendent of Police,

Vigilance & Enforcement,

Rajahmundry and others.

…Respondents.

WRIT PETITION No.12975 of 2005 :

Between:

Vegesna Seetharama Raju

…Petitioner

And

Superintendent of Police,

Vigilance & Enforcement,

Rajahmundry and others.

…Respondents.

WRIT PETITION No.12976 of 2005 :

Between:

Tavva Hanumantha Rao

…Petitioner

And

Superintendent of Police,

Vigilance & Enforcement,

Rajahmundry and others.

…Respondents.

WRIT PETITION No.12977 of 2005 :

Between:

M.V. Subbayya

…Petitioner

And

Superintendent of Police,

Vigilance & Enforcement,

Rajahmundry and others.

…Respondents.

WRIT PETITION No.12978 of 2005 :

Between:

Smt. Volati Padmaja

…Petitioner

And

Superintendent of Police,

Vigilance & Enforcement,

Rajahmundry and others.

…Respondents.

WRIT PETITION No.12979 of 2005 :

Between:

Smt. Chavala Kameswari

…Petitioner

And

Superintendent of Police,

Vigilance & Enforcement,

Rajahmundry and others.

…Respondents.

WRIT PETITION No.12980 of 2005 :

Between:

Smt. Dandu Krishna Veni

…Petitioner

And

Superintendent of Police,

Vigilance & Enforcement,

Rajahmundry and others.

…Respondents

WRIT PETITION No.12981 of 2005 :

Between:

Maddi Krishna Murthy

…Petitioner

And

Superintendent of Police,

Vigilance & Enforcement,

Rajahmundry and others.

…Respondents

WRIT PETITION No.12982 of 2005 :

Between:

Devaki Guru Brahmam

…Petitioner

And

Superintendent of Police,

Vigilance & Enforcement,

Rajahmundry and others.

…Respondents

WRIT PETITION No.12983 of 2005 :

Between:

Maddali Venkateswarlu

…Petitioner

And

Superintendent of Police,

Vigilance & Enforcement,

Rajahmundry and others.

…Respondents

WRIT PETITION No.12984 of 2005 :

-

Between:

Udayagiri Chanti Babu

…Petitioner

And

Superintendent of Police,

Vigilance & Enforcement,

Rajahmundry and others.

…Respondents

WRIT PETITION Nos.13079 of 2005 :

-

Between:

Kota Venkateswarlu

…Petitioner

And

Superintendent of Police,

Vigilance & Enforcement,

Rajahmundry and others.

…Respondents

HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION Nos.12970, 12971, 12972, 12973,

12974, 12975, 12976, 12977, 12978,

12979, 12980, 12981, 12982, 12983,

12984 and 13079 of 2005

COMMON ORDER :

It is necessary to dispose of all these writ petitions by a common order as the back ground of each case, the impugned order passed by the competent authority and the grounds urged for invalidation of the said order are similar. Indeed, the impugned order dated 10-6-2005 in all the writ petitions is similar.

Avoiding the lengthy narration of the fact of the matter, it would be suffice to briefly indicate the genesis of these cases. The Director General (Vigilance & Enforcement) and Ex-officio Principal Secretary to Government, Government of Andhra Pradesh in General Administration Department (hereafter called 'the Director General') submitted a Vigilance Report No.34, dated 10-3-2005. The said Vigilance Report pertains to two allegations. The first allegation is with regard to detection of 975 Bogus Ration Cards and Coupons in 36 Fair Price Shops of Bhimavaram Town and misappropriation of 2,697-24 quintals of PDS Rice. The second allegation is in regard to misappropriation of 47,910 litres of Kerosene Oil from the petty vendors from 1995 to 2005. After receiving the Vigilance Report No.34, dated 10-3-2005, the District Collector, West Godavari, by communication dated 8-5-2005 appears to

have asked the competent authority under A.P.State Public Distribution System Control Order, 2001 (for brevity 'the Control Order'), the third respondent herein, to take necessary action. In the meanwhile, based on the report of the Mandal Revenue Officer dated 3-10-2004, the third respondent issued a show cause notice to the petitioners individually framing three charges, which are as follows.

> Charge No.1: That he/she being a responsible F.P. shop dealer has deliberately surrendered 25 white cards to the Vigilance Enforcement Department Officials orally admitting them as bogus Ration cards possessed by him/her which is clear evidence of clandestine business carried out by him/her.
>
> Charge No.2: That he/she being a responsible F.P. Shop dealer he/she has misused Essential Commodities i.e., 85.68 quintals and 1512 Lts. Of Kerosene worth Rs.65,106/- fraudulently and caused not only monetary loss to the State Exchequer but also deceived the Government machinery deployed for strict enforcement of the PDS system.
>
> Charge No.3: That the dealer resorted to the above types of clandestine business and contravened the Clauses 10, 13 and 17 © and conditions 4,7,8,11 and 13 of the authorization issued under A.P.S.P.D.S. Control Order, 2001.

The petitioners submitted their explanations denying the allegations. They also stated in their explanation that they did not hand over any Bogus Ration Cards to the officers of Vigilance Department/Mandal Revenue Officer or that the Vigilance officials conducted door to door verification and detected the alleged Bogus Cards at the door steps of the cardholders and that all the card holders have drawn ration as per the coupons issued to them in the year 2002. They also denied the allegations of misuse of rice and kerosene.

After considering the explanation, the third respondent issued the impugned order dated 10-6-2005 cancelling the authorization of each of the petitioners under Clause 5(4) of the Control Order (the impugned order mentions as Clause 5(5) of the Control Order, which is a mistake).

The writ petitions were placed before this Court for admission and interim orders on 20-6-2005. This Court after perusing the record came to a prima-facie opinion that the third respondent did not address the essential question as to who issued the Bogus Ration Cards and this Court also expressed a doubt that the impugned order came to be passed to cover up the utter failure and negligence of the revenue officials who might have been instrumental in issuing the alleged bogus cards. This Court, therefore, directed the Principal Secretary (Government of A.P. in the Department of Revenue – who was suo motu impleaded as respondent No.5) to cause an enquiry by an officer not below the rank of Joint Secretary and file a report before this Court by
12-7-2005.

These matters were called when respondents filed applications for vacating the interim orders. They were set down before this Court on 19-7-2005 and the matters were adjourned at the request of the learned Assistant Government Pleader for Civil Supplies for filing the counter of the third respondent. Again the matters were called yesterday. As the report of the Principal Secretary to Government was not readily available in the records, the matters were directed to be called today. Today also the learned Assistant Government Pleader submits that the Principal Secretary to Government has not submitted any report. He invited the attention of this Court to the counter affidavit filed on behalf of the fifth respondent including a copy of the Vigilance Report No.34, dated 10-3-2005.

This Court has perused the affidavits accompanying the writ petitions, counter affidavits filed by respondent Nos.2 to 4, and the Vigilance Report No.34, dated 10-3-2005 as well as other material. This Court has heard learned counsel for the petitioners and the learned Assistant Government Pleader. In a nutshell, the submissions made by the learned counsel for the petitioners centre round the principle of fairness and improper procedure followed by respondent No.3, besides perversity allegedly present in abundance in the impugned order. After hearing the learned counsel for the petitioners as well as the learned Assistant Government Pleader, this Court is convinced that the observations made/findings recorded in the impugned order in each case are certainly
at variance with the averments contained in the counter filed
on behalf of fifth respondent and the allegations and the
findings recorded by the Director General in Vigilance Report No.34, dated 10-3-2005.

In Vigilance Report No.34, dated 10-3-2005, two allegations were considered. It is also revealed that the Vigilance Team after receiving the complaint conducted door to door verification and traced out the Bogus Ration Cards attached to various Fair Price Shops in Bhimavaram Town. After doing this, on Charge No.1, the Director General concluded that due to lack of supervision of the Mandal Revenue Officers, Smt. Jyothi and Smt. Sitamahalakshmi during two different periods and the Deputy Tahsildar, Navamuni Raju, the PDS Rice and Kerosene Coupon Books were issued to 350 White and 56 Pink Bogus Cards to the respective dealers even though the alleged cardholders were not in existence and that the dealers of 9 Fair Price Shops got allotted kerosene every month to the said Bogus Cards. As can be seen from these findings, the responsibility was fixed only on the Mandal Revenue Officers and the Deputy Tahsildar and there is not even a suggestion that the Fair Price Shop dealers actively connived with those officials in bringing into existence the Bogus Ration Cards.

Insofar as the second charge is concerned, it is essentially concerned with the improper grant of permission to 237 petty vendors in Bhimavaram Town. Here again the Vigilance Team conducted random verification of the cards to the extent of 20% and found that petty vendors, whose names are mentioned in the Vigilance Report and shop Nos.1, 4 and 12 of Varuna Super Bazar, were responsible for this misappropriation. It was also observed that there is a supervisory lapse on the part of the Mandal Revenue Officers for the last decade. While making recommendations as to the course of action to be taken pursuant to the Vigilance enquiry, at page No.11 of the Vigilance Report No.34, dated 10-3-2005 the Director General recommended to cancel 802 White and 173 Pink Ration Cards which were detected and established as bogus during the enquiry. In that connection, the Fair Price Shops where Bogus Cards were detected are mentioned. No recommendation was made with regard to the disciplinary action to be taken against the petitioners. This would become clear by reference to para-2 under the heading 'Recommendations'. However, in the concluding portion of the report, the Director General (see recommendation No.3) requested the Principal Secretary to Government to fix up the accountability on the concerned District Supply Officer and the Assistant Supply Officer with reference to the existence of Bogus Ration Cards, inspection of Fair Price Shops and to take deterrent action against them.

In the counter filed on behalf of the fifth respondent also, the actual position as is obtaining in the Vigilance Report No.34, dated 10-3-2005 is briefly referred to.

After perusing the Vigilance Report, this Court is prima-facie convinced that the third respondent has not at all applied
mind presumably for the reason the Vigilance Report No.34, dated 10-3-2005 was either not available with the office of the third respondent or was made available to them only after passing the impugned order. In that view of the matter, this Court is of considered opinion that the matters should be sent back so
that the third respondent, who is the competent authority under Clause 5(4) of the Control Order, can reconsider the issue in proper perspective in the light of the Vigilance Report No.34, dated 10-3-2005. Needless to mention that any observation made hereinabove is not intended to curtail the discretion vested in the third respondent. It shall be open to the petitioners to file their explanations, if any, after receiving notices from the third respondent. The third respondent should consider the matters independently after giving an opportunity of being heard to the petitioners either personally or through their counsel.

Accordingly the writ petitions are allowed, the impugned orders in the writ petitions are set aside and the matters are remitted to the third respondent for fresh disposal as directed hereinabove. There shall be no order as to costs.

_____

(V.V.S.RAO, J.)

25-08-2005

Msr.

HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION Nos.12970, 12971, 12972, 12973,

12974, 12975, 12976, 12977, 12978,

12979, 12980, 12981, 12982, 12983,

12984 and 13079 of 2005

(COMMON ORDER)

25-08-2005

(Msr)